

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Viziamarazu Virabahu Narandra Row
Bahadur v. The Secretary of State for India
in Council, from the High Court of Judicature
at Madras; delivered 13th March 1885.*

Present:

LORD BLACKBURN.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE present case, when understood, seems to be reduced to a very short point indeed. When the old zemindar, the father of the present Plaintiff, died, he left three infant sons and some infant daughters. There was a dispute as to which of those three infants sons, by different mothers, was the heir to the zemindary. It is not necessary for their Lordships to express any opinion as to which was the right heir. Upon the father's death the resident magistrate went hastily to the spot in order to preserve the peace. He immediately reported what was the state of things that he found there, and that is the report which we have first got. That was in October 1828, and, at that time, nothing further was done than the magistrate going there to protect the peace, and reporting. He afterwards went further than that. In May, having made inquiries and found that there were plausible grounds for claims on each side, and that the general feeling of the country was in favour of Kurmarazu, the eldest of these boys, who was not born in wedlock, but who had been adopted by the principal wife, and who there were

plausible grounds for saying really was the heir (their Lordships say no more than that there were plausible grounds for so saying), he recommended that he should be recognised as the heir to the zemindary. The Court of Wards Regulation Act, Regulation V. of 1804, section 6, provides as follows:—"The proceedings of the Court of Wards shall, in the first instance, be founded on the reports of the collectors respectively to the end that no delay may occur in providing for the due security and management of the property of persons incapacitated by minority, sex, or natural infirmity; but collectors making such reports upon insufficient authority, whereby inheritors of property shall be deprived of the possession and management of the said property on their own behalf, shall be liable to prosecution." Before anything was done upon his report, he proceeded to appoint guardians of the persons of each of these infants, not merely of the persons of the Plaintiff and other sons, but also of the persons of the female children of the deceased zemindar. These, however, were mere personal guardians, and, in appointing them, nothing was done touching this estate at all. On the 17th July 1829, the Secretary to the Government writes to the Board of Revenue acknowledging the reports, and his letter is No. 10, page 21, of the printed proceedings. He says:—"2. Upon the understanding that Kurmarazu, the person recognised by the collector as the heir and successor to the zemindary is so acknowledged by all parties concerned in the succession, the Right Honourable the Governor in Council resolves to recognise him as zemindar of Palcondah; and as he is incapacitated by minority from administering his own affairs, authorises you to take the estate under your charge as Court of Wards, and to exercise the powers conferred by Regulation V. of 1804."

That is the first act of the Government upon the matter. What the Government has there done is this. They state that upon the reports of the collector, they will recognise Kurmarazu, and they authorise the collector to take the estate under his charge, under the Regulation. Upon that the Court of Wards, undoubtedly, would become guardians of Kurmarazu, and, as such guardians, no doubt they took possession of the estate. It appears from a document which is not printed, but which Mr. Davey read, that when Kurmarazu came of full age the property was given over to him, and he was proclaimed as zemindar. On the assumption, upon which it must not by any means be understood that their Lordships have formed an opinion, because they have not the materials, that Kurmarazu was a usurper and the Plaintiff was entitled, the Court of Wards seem to have acted bona fide and upon very sufficient grounds, and, at the most, if the individuals acting as the Court of Wards were guilty of misconduct, that would not in any way affect the Government. Kurmarazu was then put into possession. Their Lordships see nothing which would have prevented the Plaintiff, when he came of full age, bringing an action against Kurmarazu, saying, "I am the true heir, and you are the usurper," and trying to recover the estate. Their Lordships know nothing what case he could have made, but there is nothing that would have hindered his doing so at that time. Whilst Kurmarazu was thus in possession of the property, —for it seems clear that he was so,—he was tried for high treason and rebellion, and convicted and sentenced to death.

That brings us to the next consideration, which perhaps hardly arises. It is under Regulation VII. of 1808, section 3:—"It is hereby further declared that any person born or residing under the protection of the British

“ Government within the territories aforesaid,
 “ and consequently owing allegiance to the said
 “ Government, who, in violation of the obliga-
 “ tion of such allegiance, shall be guilty of
 “ any of the crimes specified in the preceding
 “ section,”—which includes treason,—“ and who
 “ shall be convicted thereof by the sentence of
 “ a court-martial during the establishment of
 “ martial law, shall be liable to immediate
 “ punishment of death, and shall suffer the
 “ same accordingly by being hanged by the
 “ neck until he is dead. All persons who shall
 “ in such cases be adjudged by a court-martial
 “ to be guilty of any of the crimes specified
 “ in this Regulation shall also forfeit to the
 “ British Government all property and effects,
 “ real and personal, which they shall have
 “ possessed within its territories at the time
 “ when the crime of which they may be
 “ convicted shall have been committed.” Kur-
 marazu, therefore, at that time, being so con-
 victed under the court-martial, forfeited all the
 right which he had to the zemindary. If the
 Plaintiff had come forward at that time and
 said that he was the right heir, and that Kur-
 marazu was but a usurper, their Lordships do
 not see that the forfeiture of Kurmarazu would
 have affected the rights of the Plaintiff to
 recover that land. As to that their Lordships
 say nothing, except that probably it would
 not. But at that time the Government came
 into possession, claiming by way of forfeiture from
 Kurmarazu, who had certainly been in possession in
 the manner which has been described. From the
 time the Plaintiff came of full age, which is stated
 to have been in 1837, far more than the period
 mentioned in the Statute of Limitations has
 run. Now, the contention, and the only con-
 tention, is this:—The Statute of Limitations,
 Act XV. of 1877, section 10, the only section

cited, says, "Notwithstanding anything herein-
" before contained, no suit against a person in
" whom property has become vested in trust for
" any specific purpose, or against his legal repre-
" sentatives or assigns (not being assigns for
" valuable consideration), for the purpose of
" following in his or their hands such property,
" shall be barred by any length of time." It is
contended that, under the circumstances already
stated, the Government coming into possession
under a claim of forfeiture from Kurmarazu, who
had been let into possession by the Court of
Wards, (we will for the present purpose assume
by mistake,) are a person in whom the prop-
erty had become vested in trust for a specific
purpose, and that this action is brought against
such a person for the purpose of following, in his
or their hands, such property. It does seem to
their Lordships not possible to make it clearer
that that section does not apply to this case than
by simply stating what that section is and what
the case is. That is the only point on which the
Appeal has been brought, and it is the only point
which it is necessary to decide.

Their Lordships therefore have not the slightest
hesitation in advising Her Majesty that this
Appeal should be dismissed. The Appellant
must pay the costs.

